



STATE BOARD OF LAND COMMISSIONERS

Dirk Kempthorne, Governor and President of the Board

Pete T. Cenarrusa, Secretary of State

Alan G. Lance, Attorney General

J. D. Williams, State Controller

Marilyn Howard, Superintendent of Public Instruction

Winston A Wiggins, Secretary to the Board

Final Minutes Regular Land Board Meeting September 11, 2001

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, September 11, 2001 in Boise, Idaho. The Honorable Dirk Kempthorne presided. The following members were present:

Honorable Secretary of State Pete T. Cenarrusa

Honorable State Controller J. D. Williams

Honorable Superintendent of Public Instruction Marilyn Howard

Secretary to the Board Winston A Wiggins

Attorney General Lance was absent for this meeting.

MOMENT OF SILENCE OBSERVED

Governor Kempthorne began the meeting by observing a moment of silence for those killed or injured in the terrorist attacks that occurred this morning at the World Trade Center in New York, at the Pentagon and in Pennsylvania. He expressed concern for all of the families affected by this horrific chain of events.

The Land Board meeting began at 9:15 a.m.

• **CONSENT AGENDA**

Director Wiggins provided background information on the Consent Agenda items.

A motion was made by Controller Williams to approve the Consent Agenda in its entirety. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 4-0, with Attorney General Lance being absent for this vote.

1. Director's Report – approved

- A. Bureau of Minerals Official Transactions – July 2001
- B. Timber Sale Official Transactions – July 21, 2001 through August 27, 2001
- C. Bureau of Real Estate, Land Sale Section, Official Transactions – July 2001
- D. Bureau of Real Estate, Easement Section, Official Transactions – July 2001
- E. Bureau of Range Management and Surface Leasing Official Transactions – August 2001
- F. Timber Sale Activity Report
- G. Department of Lands Financial Summary – July 2001
- H. Fire Report

2. Timber Sales – Staffed by Bob Helmer, Acting Chief, Bureau of Forest Management – **approved**

A.	CR-1-0323	Soldier Lee	2,350 MBF
B.	CR-3-0465	Graham Springs	5,320 MBF
C.	CR-5-0098	TePee Springs	5,950 MBF
D.	CR-8-0091	Densmore	3,915 MBF

3. Request for Approval to Transfer 40.00 Acres of General Fund Property within Mary Minerva McCroskey State Park to the Idaho Department of Parks and Recreation – Staffed by Perry Whittaker, Chief, Bureau of Real Estate

DEPARTMENT RECOMMENDATION: That the board direct the department to deed this tract at no charge to the Idaho Parks and Recreation Department for inclusion in McCroskey State Park. It is also recommended that the property be conveyed by a quitclaim deed since the property was conveyed to the Department of Lands by a quitclaim deed.

BOARD ACTION: Approved.

4. Request for Approval of a Road Easement/Land Exchange with Ernie Bryant – Staffed by Perry Whittaker, Chief, Bureau of Real Estate

DEPARTMENT RECOMMENDATION: That the Land Board approve the completion of this easement/exchange. The department would issue a permanent road easement at no cost and Mr. Bryant would convey by warranty deed the 0.92-acre parcel of his land, along with title insurance in the name of the State of Idaho.

BOARD ACTION: Approved.

5. Addition of Name to Cottage Site Lessee Exchange List for Payette Lake – Staffed by Perry Whittaker, Chief, Bureau of Real Estate

DEPARTMENT RECOMMENDATION: That the board approve the addition of Charles Peterson to the Payette Non-Lakefront Cottage Site Exchange List.

BOARD ACTION: Approved.

6. Request for Conceptual Approval – Idaho State Board of Education/Idaho Department of Lands Property Exchange – Staffed by Perry Whittaker, Chief, Bureau of Real Estate

DEPARTMENT RECOMMENDATION: That the board give conceptual approval to this exchange proposal and direct the department to proceed with a timber cruise and appraisal.

BOARD ACTION: Approved.

7. Results of Grazing Lease Auctions – Staffed by Tracy Behrens, Range Management Specialist

DEPARTMENT RECOMMENDATION: That the board accept the high bids submitted at the auctions for leases G-5395, G-7037, G-7038, G-8962 and G-9819 and direct the department to issue new ten-year grazing leases to the highest bidders. Each lease will include a summary of the grazing management proposal submitted by the high bidder and accepted by the department.

BOARD ACTION: Approved.

8. Minutes – approved

A. Regular Land Board Meeting – August 7, 2001

• REGULAR AGENDA

9. Endowment Fund Investment Board Manager's Report – *Presented by Charles G. Saums, Manager of Investments, Dr. Nick Hallett, Chairman, Endowment Fund Investment Board and Susan Tamagni, Sutro & Company*

AUDIENCE WITH THE BOARD

Dr. Nick Hallett, Chairman, Endowment Fund Investment Board, was granted an audience with the board.

Dr. Hallett. Dr. Hallett commented that he has gained a new appreciation for Governor Kempthorne's holdback decision for public schools. He understands that when one is faced with difficult financial decisions, one can not always do what you would like to do. Dr. Hallett stated that the recommendation he was about to make was being made with extreme reluctance.

The Land Board approved the Spending Policy of the Endowment Board. It was a sound policy but some conditions have changed. The 8.5% Spending Policy was designed to protect the corpus, to distribute funds to beneficiaries and to maintain and build an adequate reserve. The 8.5% Spending Policy was developed in accordance with long-term expected revenues and with the understanding that a long-standing negative correlation between timber revenues and equity returns had existed. That recently changed.

The Endowment Board is recommending that the Spending Policy be reduced from 8.5% to 7.5% until reserves are established or until the traditional negative correlation between timber revenue and equity returns and becomes a reality again.

As of the end of August 2001, the reserve was about \$14,460,000. It is projected in June 2002 that the reserve would be about \$19,456,000. The goal was to have 50% of the corpus represented in the reserve and that would require about \$400,000,000. It is understood that, given the situation at the time we entered the stock market, it will be difficult to build reserves. But the reserves are dangerously low at the present time.

The current situation is one of concern but it is not a crisis. It seems most prudent to not let a concern develop into a crisis. If the stock market and timber market do not perform well, there will not be adequate reserves to protect the corpus. This could result in the necessity in four or five years for the Legislature to make a special appropriation to make up the corpus.

The Endowment Board recognizes beneficiary needs and makes this recommendation with extreme reluctance and with a determination to act prudently. The bottom line is to maintain integrity in the fund itself.

DISCUSSION: Governor Kempthorne observed that a reduction from 8.5% to 7.5% would be approximately \$10,000,000. Approximately \$7,000,000 would affect K-12, public education. He asked when that reduction to public schools would take place. Dr. Hallett stated that the reduction would be effective for the next appropriation year in 2003. Governor Kempthorne agreed with Dr. Hallett that protecting the corpus is absolutely critical.

Governor Kempthorne asked when there would be a clear indication that this reduction was absolutely necessary. On the heels of the 1.5% holdback to now say there will be an additional \$7 million unavailable the following year is very serious. Dr. Hallett responded that he can not speak for

the Endowment Board but can only speak for himself. He stated he does not believe that the Endowment Board members view this as a crisis. He feels they view this as a cause for concern.

In response to the question of when would it become a crisis or when would it become absolutely necessary, Dr. Hallett stated in his opinion that would be when there was no reserve. At that point, there would be very little choice. At this point in time, it is a judgment call. It would appear to be the prudent thing to do. It would be very understandable were the board to decide to wait a while to see what develops. But at the time those reserves are gone, that would be a big red flag for the Endowment Board.

Governor Kempthorne agreed that he does not want to wait until the reserves are gone. He does question whether now is the time to make that move. He thanked Dr. Hallett for bringing the recommendation forward. He asked Dr. Hallett if he felt this is the optimum time to make that change or could the Land Board, in fact, review this situation for a period of time. Dr. Hallett responded that the Endowment Board felt that at this time this was the prudent thing to do. But Dr. Hallett reiterated that the Endowment Board does not see this as a panic or a cause for alarm. He feels the Endowment Board would be very understanding if the decision is to delay this for a time as long as reserves are available. As a school superintendent, Dr. Hallett said he would personally be delighted if the Land Board chose to delay this reduction. He understands the position public schools are in right now and he also understands the holdback much better than he did before.

Controller Williams commented that he feels the board should take a hard look at this request and place endowment reform in perspective. At least 25% more is being taken out now than would have been taken had the old program been in place because the bond market has gone down so much the last several months. Controller Williams suggested that the board allocate perhaps two or three hours for an in-depth review of this situation before it agrees to move another \$7 million. He suggested that the board defer this item for a month.

Dr. Howard stated she recognizes that the Endowment Board wanted to provide a heads up on what might lie ahead. She understands that it is difficult to project what the future might hold on all of the assets. She suggested this item might be rolled into the kinds of discussions that will come later this year as budgets are updated in light of new information. She feels this might be treated as another piece of emerging information that could be used as the time for budget setting gets closer. She appreciates the fact that the Endowment Board recognized this need. She knows that the Endowment Board is a body that takes their role very seriously and wants very much for this fund to contribute on an increasing basis to the public schools of the state. When faced with that desire, and with the reality of how this fund is performing at this time, Dr. Howard feels the Endowment Board is operating in a prudent manner.

Dr. Hallett agreed with Controller Williams that it was the right decision to get involved with the equity market and in the long term that decision will be a very good decision. In fact more money for the beneficiaries is already available as a result of that move. Dr. Hallett stated that the intent of the Endowment Board was not necessarily that the Land Board would act upon this recommendation at this meeting. The Endowment Board felt the Land Board should receive this recommendation to allow due consideration. Dr. Hallett stated it is not a disappointment at all that the Land Board has chosen to delay a decision on this matter. However he does feel it is important to get the information on the table for consideration and discussion. Governor Kempthorne concurred. He added that it is also important for everyone to realize that this is a possibility in 2003. We all need to become as effective and efficient as we can in the utilization of these finite dollars. Governor Kempthorne stressed that education is a priority.

AUDIENCE WITH THE BOARD

Susan Tamagni, Sutro & Company, was granted an audience with the board.

Ms. Tamagni. After completing an analysis of each and every manager, Sutro feels very good about all of the choices, with the exception of Capitol Investment Advisors. Part of the Spending Policy dictates very clearly the circumstances under which a manager should go on review. The Endowment Fund Investment Board is relatively intolerant of underperformance.

Capitol Investment Advisors is the local investment advisor. They are a large cap growth manager, which is a particularly difficult space right now. They have in fact been placed on review. Sutro has had numerous discussions and conference calls with Capitol Investment Advisors trying to characterize the reason behind their performance. The Endowment Board met and discussed this matter at length. The desire is to give Capitol Investment Advisors the benefit of the doubt because they are a very capable group. But they are having a tough time and it is possible that in the next couple of months a decision will be made whether it will be recommended to the board to dismiss them. Other than that, the diversification is working just as expected. Ms. Tamagni stated that the benchmark is being beat within 30% fixed income, 70% S&P and Sutro is very pleased.

Ms. Tamagni stated there has been some question regarding fixed income performance and there was a discussion regarding relative underperformance by the internal fixed income managers. Ms. Tamagni pointed out that to some extent is a fallacy. There are two ways to look at fixed income. There is an aggregate fixed income number that includes operating accounts and some residual fixed income still in the process of liquidating. Then there are the actively managed fixed income accounts, which would be the internal portfolio managers. Ms. Tamagni stated that the internally actively managed fixed income has done very well.

Controller Williams stated that when Bob Maynard addressed the board last month, he was specifically asked about Capitol Investment Advisors. Mr. Maynard told the board that high cap growth is a tough area in the market and has to be analyzed over a market cycle. If these people are good, in good times they should be above the benchmark. In bad times, they should be below the benchmark. Controller Williams feels this might be the time to give them the benefit of the doubt and see how well they perform. He suggested giving them a market cycle to go through.

Governor Kempthorne requested that handout materials be provided ahead of the Land Board meeting date so that the board has adequate time to review the materials. Controller Williams agreed and suggested that perhaps a schedule could be worked out so that when Ms. Tamagni is in Boise the board can capitalize on her time before she flies back to San Francisco. He suggested a briefing perhaps the day before the board meeting to give the board members a chance to digest the information.

BOARD ACTION: A motion was made by Controller Williams to defer a decision on the Endowment Fund Investment Board's request to lower the current distribution to the beneficiaries from 8½% to 7½%. The board will continue to monitor and discuss this matter. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 4-0 with Attorney General Lance being absent for this vote.

The EFIB Manager's Report is provided monthly for the board's information.

10. Status Report for Buttercup Road University Endowment Parcel Near Hailey –

Presented by Perry Whittaker, Chief, Bureau of Real Estate

DEPARTMENT RECOMMENDATION: That the board direct department staff to retain this property in the short term. IDL will monitor Blaine County real property appreciation rates and will begin the search for a substitute property when appreciation rates decline significantly.

DISCUSSION: None.

BOARD ACTION: No action was taken on this agenda item.

11. Columbia Spotted Frog Agreement/Reclassification Appeal from Western Watersheds Project – Presented by Tracy Behrens, Range Management Specialist

- **Request for Contested Case Hearing**

DEPARTMENT RECOMMENDATION: The department recommends that the request from Western Watersheds Project (WWP) for a contested case hearing be denied.

AUDIENCE WITH THE BOARD

Mr. Jon Marvel, Executive Director, Western Watersheds Project, was granted an audience with the board.

Mr. Marvel: Mr. Marvel stated that this particular request was made to more fully facilitate a complete record and a better understanding of the matter regarding state trust land at Sam Noble Springs. Mr. Marvel stated that a contested case hearing would allow for the cross-examination of staff and other witnesses to determine a basis for recommendations being made to the board. Mr. Marvel feels it is impossible to know the basis for the department's recommendations. Mr. Marvel feels that without a contested case hearing, the board is acting on incomplete information, which he feels will lead to future litigation.

DISCUSSION: Christie Cunningham, Deputy Attorney General for the Department of Lands, stated that a contested case hearing is provided for only when it is so authorized by statute, rule or order of the agency. In her analysis, there is no statute or rule that provides for a contested case hearing. WWP does not have a recognized property right or inherent right to a land use re-classification. Further, the Land Board is not determining the status or rights of WWP under a statute or rule. This is a land use reclassification request, which is under the administrative authority of the Land Board and the Department of Lands. Analysis of this matter affirms the director's recommendation to deny the request for a contested case hearing.

To clarify, Controller Williams commented that the right to a contested case hearing has to be based upon statute, rule or order. It has to involve some legal interest or legal right. It has to be considered a legitimate claim to that right. In this situation, there is no vested right to a reclassification but perhaps a hope for a reclassification.

Dr. Howard asked for clarification of the current decision before the board. Controller Williams stated that the question is basically procedural. How does the board proceed from here. Does the board hold a contested case hearing with sworn witnesses and all of the trappings of a trial.

BOARD ACTION: A motion was made by Controller Williams to accept the department's recommendation that WWP's request for a contested case hearing be denied. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 4-0 with Attorney General Lance being absent for this vote.

- **Columbia Spotted Frog Agreement/Reclassification Appeal from WWP**

DEPARTMENT RECOMMENDATION: That the board approve the following:

1. Reject WWP's appeal of the director's decision to not reclassify the Sam Noble Springs (SNS) parcel at this time.
2. Direct the Department to draft a Candidate Conservation Agreement with Assurances (CCAA) for consideration by USFWS. The CCAA will identify management strategies for the SNS parcel that will maintain grazing lease income to the endowments while benefiting spotted frog populations.

3. Approve issuance of a ten-year grazing lease to Joseph Black with management provisions as agreed to by the department and identified in the draft CCAA.

DISCUSSION: Director Wiggins distributed a copy of the draft Candidate Conservation Agreement with Assurances (Agreement) to the board. A copy of the Agreement was also forwarded to the Fish and Wildlife Service. The Agreement contains modifications outlined in the grazing management on the site. It also sets in place a provision where Fish and Game and the department would work to coordinate research to develop the relationship between population trends and management activities. The department has expressed its willingness to work with the Fish and Wildlife Service to come up with an appropriate agreement that provides the necessary assurances.

AUDIENCE WITH THE BOARD

Mr. Tracey Trent, Idaho Department of Fish and Game, was granted an audience with the board.

Mr. Trent: Mr. Trent stated that this situation is not unusual. In dealing with candidate or rare species, almost by definition not a lot is known. In fact, the existence of Spotted Frogs on the parcel was not known until 1997. Factors that affect the size of the population and its health are not known although speculations can be made based on Spotted Frog populations in other areas and on specific data collected at Sam Noble Springs.

The Agreement to a large degree addresses the current knowledge of Spotted Frog habitat requirements and makes provisions for the continued gathering of information so that the management at Sam Noble Springs can be adapted to deal with new information as it comes up. The main concern is ensuring the persistence of the frogs and providing connectivity of this population to other populations of Spotted Frogs in the area. The primary point that needs to be addressed is cover in the riparian zone. The Agreement addresses that point fairly well and provides an opportunity to measure cover and to measure the frogs response while monitoring the population at some key sites.

Mr. Trent feels there are adequate safeguards included in the Agreement to protect the Spotted Frog population. The Agreement allows for adaptive management of the parcel and for information gathering to determine Spotted Frog habitat requirements and the affects of grazing. The Agreement addresses the concerns of the frogs while also protecting the livestock grazer in terms of having some assurance that if the land is properly managed, Spotted Frog habitat will be protected.

AUDIENCE WITH THE BOARD

Mr. Greg Schildwachter, Office of Species Conservation, was granted an audience with the board.

Mr. Schildwachter: From this point would be a negotiation between the State of Idaho and the U. S. Fish and Wildlife Service that would result, if successful, in a contractual agreement outlining the commitments of all involved parties to do something that is extremely critical in this day and time and that is to show that land management and wildlife conservation are essentially one and the same activity. They are not alternatives to one another.

To put this effort into context, this is exactly the kind of work that the State of Idaho is seeking to do through the Governor's Office of Species Conservation. Essentially the Office of Species Conservation provides a one-stop shop to put together effective land management, which includes both the return of revenue from revenue producing activities and the conservation of species, whether rare or not.

DISCUSSION: Governor Kempthorne commented that the whole idea behind the Office of Species Conservation is to get in front of these issues and to not be reactive. We want to see if we can positively impact a species before it gets to the listing stage.

AUDIENCE WITH THE BOARD

Mr. Chris Black, former Sam Noble Springs lessee, was granted an audience with the board.

Mr. Black: Mr. Black stated that his family has leased this parcel since 1948. The property contains one of the most important populations of Spotted Frogs in the Owyhees. Mr. Black feels that the current population of Spotted Frogs reflects on his family's management of this parcel through time.

Since 1993 Mr. Black has managed the land using a holistic management style. This holistic management looks at the species and tries to work with those species along with grazing management. Through this holistic management, frog habitat was created and fostered. Due to a lack of research, there is no indication that the numbers of Spotted Frogs has gone up or down.

Mr. Black stated he would work with the state under the Agreement to meet any biological concerns. His family is trying to be good stewards of the ground while also trying to make a living off of it. In the past Mr. Black has received awards for his range management. Botanists, hydrologists, watershed specialists and others have been to this specific ground and have found the ground to be in high seral condition.

DISCUSSION: Governor Kempthorne asked Mr. Black about fencing around the ponds to keep cattle out. Mr. Black responded that currently he does not have fencing in place. Fish and Game has put a temporary fence around one of the ponds at the main Sam Noble Springs. In the past he has agreed to fence off other ponds as long as water for his livestock was provided. Tracey Trent, Department of Fish and Game, added that the Agreement specifies there will be a permanent fence constructed around Ponds 1, 1A and 2. Currently, there is only a temporary fence around these ponds.

Governor Kempthorne asked about the condition of the temporary fence. Mr. Black stated it is a three-wire electric fence. Currently the top wire is down. Deer and elk use the habitat and it appears they may have knocked down the top wire. Up to this time, cattle have not entered the enclosure. Governor Kempthorne asked whose responsibility it is to fix the fence. Tracey Trent stated that Fish and Game would fix the fence.

Secretary of State Cenarrusa commented he read an article that stated cattle trampling over the edges of the main body of water increases the habitat for Spotted Frog. Mr. Black stated in his view cattle in the ponds actually keep the ponds open for habitat. Once the ponds are fenced off, Mr. Black feels it is likely the ponds will silt in and cover with vegetation. The ponds catch a lot of silt. The cattle keep the edge areas of the pond free and it appears that the Spotted Frogs lay their egg masses in that warmer part of the water near the edge.

Dr. Howard asked if the ponds were created in a way to pool water just for livestock access. Mr. Black responded that the system is a non-perennial stream, meaning it does not run water year round. In the mid-summertime, most of the length of the stream dries up. The ponds were created to gather water so that livestock could have water in the fall. Most of the water that comes out of the springs goes into the wet meadow complexes adjacent to the springs and the wet meadow complexes act as a huge sponge to absorb most of the water coming out of those sources. What you will see is a wet meadow and then quite a dry stretch down through the center. It is very fringe-type habitat for Spotted Frog. Mr. Black stated that his private ground has better habitat for frogs because it has a perennial-type stream and wet corridors. On the Sam Noble Springs parcel the corridors are not wet and the stream is not perennial.

Controller Williams asked Mr. Black if he could remember what the ground was like before the ponds went in. Apparently the Spotted Frogs migrate. Mr. Black stated that the water sources have always

been there in one way, shape or form. At one time a set of water tanks sat in the middle set of ponds on the parcel. Mr. Black's family reconstructed and maintained the ponds. Mr. Black stated that the ground has had an upward trend in grass since it has been managed holistically. Plant spacings have moved closer together.

Controller Williams commented that he was told the lease had gone from thirteen acres per AUM to three acres per AUM. One issue the board has to face is how to get more money from grazing. One way is to increase the AUMs. Controller Williams remarked that this state parcel is in many respects a success story on how to improve range.

Mr. Black stated he tries to address wildlife concerns. He brings in large numbers of cattle for short periods of time. By doing so, the resource is more uniformly used and the ground is allowed more time to rest afterward. Mr. Black stated that rest periods are just as important as periods when the cattle are allowed to graze. As a result of his management, grass grows up to the base of most juniper trees and that fact is the direct result of getting the numbers of cattle on the parcel and cultivating the soil to the extent that it allows plant spacings to shrink. It creates a situation where the water filters into the ground instead of running off.

Dr. Howard commented that Mr. Black typifies the new generation of people using the land. His willingness to partnership with agencies to recognize there are lots of interests at work and that steps need to be taken is appreciated. The issues of being able to combine grazing and conservation and cooperation between agencies is something the Land Board values.

Dr. Howard commented in listening to Mr. Trent from Fish and Game, she noted eight different topics under consideration as research questions. She feels that has all of the components of asking the right questions, taking the steps, creating the partnership while not hiding our eyes to what the realities of the situation are, both the business side and the conservation side.

Dr. Howard feels it is useful to have these circumstances brought to the board's attention so that everyone has to consider what the right path is to get to the end product, which is maintaining our resource and also our land while creating habitat. Dr. Howard commented she is very pleased to have Mr. Black tell the board about the steps he has taken over time.

Mr. Black feels that a key point is his partnership with the state. He feels the interests are coming together. Mr. Black's family has held a 50-year good track record of paying the endowment for their use of the state parcel. Part of his philosophy in holistic management is to bring people together to work out their differences on the land. He feels that until everyone can go out on the ground and look at it through the same eyes, nothing can be accomplished.

AUDIENCE WITH THE BOARD

Mr. Jon Marvel, Executive Director, Western Watersheds Project (WWP), was granted an audience with the board. Mr. Marvel provided a box of materials (papers) for inclusion into the record.

Mr. Marvel: Mr. Marvel stated that this lease was one of the thirty-some odd leases that were thrown out by the Idaho Supreme Court in 1999 and reopened for application subsequent to that decision. WWP (then Idaho Watersheds Project [IWP]) had the opportunity to reapply for the lease as a grazing lease but instead chose to use this particular lease as an example of an effort to apply for another category of lease through reclassification.

Attorney General Lance published an editorial in the Idaho Statesman in which he said the new rules that the board adopted for grazing and cropland leases provided fairness for other entities and individuals who wished to apply for another category of lease through reclassification. The issue of fairness is important because in the case of the Sam Noble Springs lease that is exactly what WWP did twenty-two months ago. Mr. Marvel feels that the fact that WWP has waited twenty-two months for a hearing on this issue shows a great deal of patience on their part. Mr. Marvel feels that WWP's

proposal is by far the best both for the beneficiaries of the trust and for the candidate species that live on the land.

Mr. Marvel stated he is disappointed in listening to the board because he feels the focus of the hearing has not been on the fiduciary responsibility of the board members or the beneficiaries of the trust or trusts. WWP is offering to pay double what Mr. Black is paying for this lease if the lease is reclassified. Additionally, WWP is offering to pay for all of the fencing necessary to isolate this lease from adjacent land, the boundary of which is not fenced at this time.

Mr. Marvel stated WWP is disturbed that there is no criteria identified in any of the documents provided by the Department of Lands for reclassification of leases. In the past, the department has defined highest and best use as the use that will bring the greatest long-term financial return to the beneficiaries. However there is no mention of this determination in the record provided by the department in this matter. WWP is offering additional funding for the beneficiaries based on a reclassification. Mr. Marvel commented that, based upon remarks made at the meeting, it appears the board has already made up its mind. Mr. Marvel stated this "sounds like a pretextual conclusion, which I think constitutes an arbitrary decision under the law." Mr. Marvel went on to say that the Agreement has not been agreed to by other agencies and there is no assurance that the Agreement will be acceptable to other agencies involved in the process.

Mr. Marvel feels that a problem in developing information to present to the board is that material is presented as if factual with no opportunity for cross-examination. WWP has no opportunity to question department staff to determine the basis for presenting a recommendation to the board. There is no information on how the department developed its criteria for rejection of the reclassification request. Should the board choose to deny WWP's request for reclassification, Mr. Marvel feels that the board's recommendation that WWP should apply for other kinds of leases besides grazing leases, or should ask for a reclassification, is a moot point if the board is not willing to give serious consideration to the request.

Additionally, Mr. Marvel stated that the Constitution of Idaho states that these school endowment and other endowment lands shall be "carefully preserved." Mr. Marvel stated he has not heard any discussion as to what this means and he requested an explanation.

Mr. Marvel stated WWP would commit to renewing the lease for an indefinite series of ten-year periods as long as WWP is in existence. WWP would also consider increasing the valuation of the lease for conservation purposes on subsequent lease periods or would renegotiate an additional payment during the period of any term of the lease should the board wish to enter into such negotiations. Mr. Marvel stated that if this use is higher and better than grazing because it pays more money, the board must consider that option.

In addition, Mr. Marvel stated that WWP is offering to pay for the costs associated with fencing the ponds, pipelines and other installations. Mr. Marvel stated his information is that the other leaseholder is not offering to pay for those expenses and he asked for confirmation of that information.

Mr. Marvel stated that staff from Fish and Game, Fish and Wildlife Service and BSU met to discuss grazing programs for Sam Noble Springs. Mr. Marvel asked the board to take note of the fact that those meeting attendees stated disadvantages of the proposed Agreement. They stated that the riparian area is still grazed in association with uplands owned by Mr. Black and the BLM. Grazing intensity in the riparian wetland complex can not be controlled independent of the uplands and therefore there will be disproportionate use of frog habitat by livestock. They stated there is no vegetation-based measure of livestock use thereby making it very difficult to adjust grazing to meet the needs of frogs and other wildlife. They stated that the overall condition of the riparian wetland complex will not be improved significantly and that one of the water developments is problematic for frogs. They described alternative proposals in which they state an order of priority for the benefit of Spotted Frogs.

The first proposal is to fence off the entire state land parcel at Sam Noble Springs along its borders with BLM and private lands and to reclassify the lease as a miscellaneous lease. Discontinue livestock grazing in the allotment. IDL would be paid an annual fee of at least twelve hundred dollars for the lease. Mr. Marvel stated WWP has offered to double that amount. Potential sources of funds for fencing and for the annual lease fee would be Idaho Fish and Game, U. S. Fish and Wildlife Service and/or the Office of Species Conservation. Mr. Marvel stated WWP has offered to pay that expense. Under this option, some light intensity grazing could be accommodated, depending upon the season of use.

Advantages would be that the wetland complex would recover to fully functioning condition over a period of years. Spotted frog habitat would be enhanced and water quality would improve. Benefits would accrue to other species, most notably sage grouse. No additional expenditures would be required for water developments, exclosures and monitoring of the grazing lease and there would potentially be a greater return to the state endowment. State land could be managed independent of the adjacent private and BLM land.

Disadvantages would be a significant disruption of the current grazing program of the lessee. Mr. Marvel asked why the board is considering the potential disruption to the management of the grazing lessee when WWP's proposal exceeds the highest priority proposal for management of frog habitat. Mr. Marvel stated that the Idaho Supreme Court has been absolutely clear in several decisions that the board does not have the discretion to consider grazing lessees and livestock operators concerns over the beneficiaries of the trust and yet he feels that is what the board is doing should they deny reclassification of this lease.

Mr. Marvel told the board that it was a disappointment for WWP to follow the suggestion and direction of the board to attempt to reclassify a lease for conservation purposes and then to be told that their attempt has no merit. He asked what kind of cooperative state of mind that shows the board to be in. He stressed that the word "beneficiary" had not been used once during this meeting, except by him. He encouraged the board to note that when WWP participates in auctions, they raise money. WWP could have participated in this lease but chose to try another way to find out if the board and the department staff would be interested in "doing anything other than the bidding of the livestock industry." Mr. Marvel stated he now knows the answer.

In conclusion, Mr. Marvel asked for the cost to the department for this lease. Director Wiggins stated that the estimated cost of improvements on site is in excess of \$9,000. Deputy Attorney General Cunningham stated that the Agreement requests \$20,000 in federal funding to cover all improvements, including fencing, water developments and other management costs on this parcel.

DISCUSSION: Controller Williams stated that he disagreed with Mr. Marvel's views on how the board considers its constitutional responsibilities. The board considers its constitutional responsibilities very seriously. He agreed that work needs to be done to solve this problem because of its potential impact on other state lands and he feels that the board is taking positive steps in that direction. Dr. Howard agreed with Controller Williams. She finds it troublesome when she hears someone say that the board is not thinking about the young people or their duty to them.

Governor Kempthorne commented that although Mr. Marvel made good points in issues he raised, those points were overshadowed by Mr. Marvel's need to give the board a lesson in civics. Governor Kempthorne found that to be unfortunate. He commented to Mr. Marvel that no bridges were built today and he thanked Mr. Marvel for his time.

Controller Williams advised Mr. Marvel that he did not appreciate receiving a lecture in this manner. Problems are solved through cooperation and collaboration, not through confrontation. In considering WWP's request for reclassification, both sides were weighed. WWP's proposal had merit and was considered. However, in this situation, Controller Williams feels the Agreement is the appropriate action to take, keeping in mind the long-term management of the endowment.

BOARD ACTION: A motion was made by Controller Williams to accept the above-listed department recommendations. Controller Williams noted under recommendation two that the department has already drafted the Candidate Conservation Agreement with Assurances and will continue to pursue its implementation. Superintendent Howard seconded the motion. The motion carried on a vote of 4-0 with Attorney General Lance being absent for this vote.

12. Department of Lands Budget – Presented by Winston Wiggins, Director

DISCUSSION: Dr. Howard asked whether the department has had enough time to examine computer-related requests in detail to know that this path is a good path to follow. She asked for assurance that this is going to be a viable system. Director Wiggins responded that the department is very close to a good MIS plan. The department is communicating with other agencies to understand what they have done and to see their successes. The department budget identifies two deficiencies in the MIS program. First, the department has a large office in Coeur d'Alene with mission-critical programs. That office does not have a programmer to provide support. This budget request would put that support in place. It would also provide support for the outlying northern Idaho IDL offices. The second thing that has come to the department's attention is that the current MIS manager is spending a great deal of time doing actual project work rather than having the time to oversee and manage critical items. This budget request will provide this individual with relief so that he could, in fact, provide the management that is necessary to ensure that all of the programs move forward in an appropriate manner. It is a step. In and of itself it does not at all guarantee that it will solve all of the problems. But it puts into place the structure that is needed to move in that direction.

Dr. Howard asked about the Idaho Board of Scaling Practices request for funds for publication of the Log Scale Manual. She asked if this manual was also available online. She feels all state agencies are looking for ways to cut down print costs by having these types of items accessible online. Director Wiggins stated he would take the steps to make that happen.

Controller Williams asked if funds for a new Priest Lake office would come out of the Earnings Reserve. Director Wiggins stated yes. Controller Williams suggested using an exchange, perhaps lots at McCall, in return for a turnkey building at Priest Lake. Director Wiggins stated the department would look at that option.

BOARD ACTION: Controller Williams moved that, subject to further review, tentative approval is given for the department to proceed with its budget as outlined. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 3-0, with Controller Williams, Secretary of State Cenarrusa and Superintendent Howard voting aye. Governor Kempthorne abstained from this vote; Attorney General Lance was absent for this vote.

• INFORMATION AGENDA

Director Wiggins briefed the Land Board on the Information Agenda item. No Land Board action is required on the Information Agenda.

13. New Grazing Lease to Diamond A Livestock (Cancelled Western Watershed Project Lease G-7222)

- A motion was made by Controller Williams to resolve into Executive Session at 11:35 a.m. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 4-0 with Attorney General Lance being absent for this vote.

- **EXECUTIVE SESSION**

A. To Consider and Advise Its Legal Representatives in Pending Litigation or Where There is a General Public Awareness of Probable Litigation – *Presented by Steve Schuster, Deputy Attorney General, Idaho Department of Lands*

B. To Consider Personnel Matters, Idaho Code § 67-2345(1)(b) – *Presented by Winston Wiggins, Director*

- A motion was made by Controller Williams to resolve back into Regular Session at 12:25 p.m. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 4-0 with Attorney General Lance being absent for this vote. No actions were taken by the board during the Executive Session.

ACTION TAKEN ON ITEM NOT ON THE AGENDA

- A motion was made by Secretary of State Cenarrusa to raise the director's salary from \$83,782 to \$86,500. Dr. Howard seconded the motion. The motion carried on a vote of 4-0 with Attorney General Lance being absent for this vote.

There being no further business to come before the board, the meeting adjourned at 12:27 p.m.

IDAHO STATE BOARD OF LAND COMMISSIONERS

/s/

President, State Board of Land Commissioners and
Governor of the State of Idaho

/s/

Pete T. Cenarrusa
Secretary of State

/s/

Winston Wiggins
Director

The above-listed final minutes were approved by the State Board of Land Commissioners at the October 9, 2001 regular Land Board meeting.